

15 Nov. 04

REMARKS

Claims 1, 4, 6, and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Nakamura, U.S. Patent No. 6,422,703 B1, Yamawaki et al., U.S. Patent No. 6,163,585, and further in view of Sumio Ozeki, JP H04-96535.

Claims 2, 3, 5, 7, 9, and 10 were objected to as being dependent upon a rejected base claim, but were stated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Nakamura, which is used to support the rejection of claims 1, 4, 6, and 8, is only available as prior art, if at all, under 35 U.S.C. §102(e) in order to support the 35 U.S.C. §103(a) rejection. This is so since Nakamura has a date of patent of August 27, 2002, which is after the U.S. filing date of November 9, 2000 of the above-captioned application. The U.S. filing date of Nakamura of August 12, 1999 is before the U.S. filing date of this application.

It is to be noted that Nakamura shows as the assignee NEC Corporation. A copy of the Assignment assigning the application over to NEC Corporation, along with a copy of the Assignment Recordal Cover Sheet and the Notice of Recordation are attached hereto showing that the application on which Nakamura issued was assigned to NEC Corporation by an assignment dated August 4, 1999 and recorded in the United States Patent and Trademark Office on August 12, 1999 at reel number 010172, frame number 0641.

In addition, Applicants submit herewith Declarations by each of the inventors herein, as well as the Declaration of Roh Ishikawa of NEC Engineering Ltd. to show an obligation to assign the above-captioned application to NEC Corporation at the time the invention was made for which the above-captioned application was filed to seek a patent.

It is respectfully submitted that, based upon the attached documents and based upon 35 U.S.C. §103(c), which provides that:

“Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

the rejection of claims 1, 4, 6, and 8, based in part on Nakamura, should be withdrawn.

Since the rejections of claims 1, 4, 6, and 8 should be withdrawn, the objection to claims 2, 3, 5, 7, 9 and 10, as being dependent upon a rejected base claim, should also be overcome.

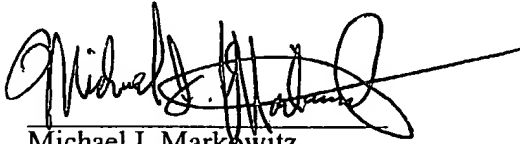
CLOSING

An earnest effort has been made to be fully responsive to the Examiner's objections. In view of the above amendments and remarks, it is believed that independent claims 1 and 8 are in condition for allowance, as well as those claims dependent therefrom. Passage of this case to allowance is earnestly solicited.

However, if for any reason the Examiner should consider this application not to be in condition for allowance, he is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper, not fully covered by an enclosed check, may be charged on Deposit Account 50-1290.

Respectfully submitted,



Michael I. Markowitz
Reg. No. 30,659

Enclosure: Copy of Assignment
Copy of Assignment Recordal Cover Sheet
Copy of Notice of Recordation
Declaration of Hitoshi Fujita
Declaration of Fumio Nakano
Declaration of Roh Ishikawa

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